

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY WILLIAMS,

Petitioner,

v.

Case Number: 07-CV-12318
Honorable Patrick J. Duggan

JAN E. TROMBLEY,

Respondent.

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OPINION AND ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner Gary Williams ("Petitioner"), a state inmate currently incarcerated at the Lakeland Correctional Facility in Coldwater, Michigan, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254. On June 16, 2009, this Court denied the petition and declined to issue a certificate of appealability. Similarly, on January 12, 2010, the United States Court of Appeals for the Sixth Circuit denied Petitioner's application for a certificate of appealability. Petitioner subsequently filed in this Court a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), which the Court denied on April 30, 2010. Petitioner now has appealed that order as well and therefore filed a request for a certificate of appealability on June 14, 2010.

In his Rule 60(b) motion, Petitioner argued that he was entitled to have the denial of his habeas petition set aside because he was "defrauded" by Respondent's failure to serve him with a copy of her response to his petition. This Court held that Petitioner failed to allege fraud or misrepresentation on the part of Respondent, even if he in fact did not receive Respondent's answer to the petition. The Court also concluded that

Petitioner failed to demonstrate that relief was warranted.

To appeal the Court's ruling, Petitioner must obtain a certificate of appealability pursuant to 28 U.S.C. § 2253. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604 (2000). Petitioner fails to make this showing.

Accordingly,

IT IS ORDERED, that Petitioner's request for a certificate of appealability is **DENIED**.

DATE: August 12, 2010

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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